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State Court of Appeals Considers Precedent-Setting Case For Clean Groundwater

(Santa Fe, NM) — The New Mexico Environment Department (NMED) argued its case last week before the State Court of Appeals that monitoring and cleanup requirements included in the Supplemental Discharge Permit for Closure issued to Tyrone copper mine in 2003 are necessary to protect the state's groundwater once the copper mine is closed.

Phelps Dodge Tyrone, Inc., which operates the 9,400-acre Tyrone mine, is challenging the Department's authority to issue a mine closure permit with requirements to re-grade and cover rock piles that will reduce acid rock drainage. The measures are deemed necessary to prevent and abate any future groundwater contamination from the rock piles at the mine.

Ore stockpiles and waste rock piles at the Tyrone mine, which is approximately 10 miles southwest of Silver City, cover about 2,800 acres and contain some 1.7 billion tons of rock. This rock produces an acid drainage containing heavy metals and sulfates, which is contaminating groundwater at the mine.

Tyrone also contends that water quality standards need not be met within an approximately 4,000- to 5,000-acre area of the mine site. Tyrone maintains that it will capture and treat most of this contaminated groundwater.

"This is an important case before the Court of Appeals," NMED Secretary Ron Curry said. "Groundwater, which provides 90 percent of the state's drinking water, is probably the state's most important natural resource and the Department must retain its authority as stipulated in the state Water Quality Act to maintain and ensure clean groundwater for future generations."

Oral arguments were presented before the New Mexico State Court of Appeals on Jan. 19.

NMED proposed the Supplemental Discharge Permit for Closure to Tyrone mine on May 10, 2002. The Department held a hearing on the permit in May 2002, and issued the final permit April 8, 2003. Tyrone appealed the permit on July 3, 2003, to the state Water Quality Control Commission, which upheld the terms of the permit and issued its final order on the case on Aug. 26, 2004. Tyrone then filed its appeal with the New Mexico Court of Appeals on July 12, 2004.

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